

150825  
Pietro, to



Comptroller General  
of the United States  
Washington, D.C. 20548

116911

REDACTED VERSION'

## Decision

**Matter of:** Abt Associates, Inc.

**File:** B-253220.2

**Date:** October 6, 1993

Dean M. Dilley, Esq., and Michael J. Schaengold, Esq.,  
Patton, Boggs & Blow, for the protester,  
Robert A. Mangrum, Esq., and Grace Bateman, Esq., Seyfarth,  
Shaw, Fairweather & Geraldson, for Chemonics International,  
Inc., an interested party.  
Robert Sonenthal, Esq., Agency for International  
Development, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. An offeror's provision of advisory services to a procuring agency prior to the issuance of a solicitation did not result in an organizational conflict of interest where the material provided by the offeror did not lead directly, predictably and without delay to the solicitation's specifications or work statement.
2. Contention that the awardee had an unfair competitive advantage because of its provision of advisory services to the procuring agency prior to the issuance of a solicitation is denied where the record does not show that the awardee received competitively useful information not available to the protester.
3. Protest that the procuring agency unreasonably evaluated the protester's experience as the incumbent contractor and the awardee's overall higher technical score is denied where the record shows that the protester received full credit for its incumbent experience and where the protest of the awardee's evaluation was no more than mere disagreement with the agency's conclusions.

'The decision issued October 6, 1993, contained confidential or source selection sensitive information, and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

4. Protest that a procuring agency's evaluation was the result of bias is denied where the protester's allegations are based on no more than supposition and inference, and the protester fails to show that the alleged bias translated into agency action that unfairly affected the protester's competitive position.

---

#### DECISION

Abt Associates, Inc., protests the award of a contract to Chemonics International, Inc., under request for proposals (RFP) No. Honduras 93-011, issued by the Agency for International Development (AID) for technical assistance services in support of AID's agriculture reform program in Honduras. Abt argues that Chemonics has a significant organizational conflict of interest and that AID's technical evaluation was unreasonable and biased against Abt.

We deny the protest.<sup>1</sup>

The RFP contemplated the award of a cost-plus-fixed-fee contract for services supporting the second phase of AID's agricultural policy analysis and implementation project in Honduras. The first phase of the project was performed by Abt and supported the development and passage of Honduras' Agriculture Modernization Act. The second phase of the project involves implementing policy reforms arising out of the Act, and supporting policy analysis and formulation in the area of environmental and natural resources management.

Prior to the issuance of the RFP, AID prepared a project paper to assist in the design of the second phase of the project. In support of its preparation of the project paper, AID obtained advisory services from [deleted], a Chemonics employee, and [deleted], a [deleted] employee who was ultimately proposed by Abt. The advisory group was led by [deleted] AID's project manager for phase one of the project and the chairman of AID's evaluation panel for this procurement.

The basic information contained in the project paper was provided to offerors in the RFP's detailed statement of work, which informed offerors of the project background, contract objectives and required scope of work. In pertinent part, the RFP's work statement provided that, within 30 days of notification of contract award, the contractor would field its team leader; other members of the contractor's "long-term team" would be fielded in

---

<sup>1</sup>A protective order was issued in this case. Abt's and Chemonics' counsel were admitted under the protective order and received access to protected material.

accordance with a schedule proposed by the team leader and approved by the AID's project officer, but not later than 90 days from award.<sup>2</sup> The kinds and qualifications required for the contractor's long-term personnel were also identified; specifically, ten economist or other specialist positions were identified, including one for the contractor's senior policy economist/chief of party (COP). Offerors were required to provide resumes and assurances of availability for each of its long-term professional personnel.

The stated basis for award was the proposal that offered the best value to the government, considering both cost and technical criteria. Technical evaluation criteria were stated to be more important than cost but cost could "be the determining factor if the technical proposals . . . [were] closely ranked." The RFP stated the following technical evaluation criteria and their relative weights:

CRITERIA	PERCENT (%)
1. Qualifications of Long Term Personnel. . . . .50	
COP (relevant work experience and education)-----15%	
Other team members (relevant work experience, education and complementarity of team members)--35%	
2. Technical approach and understanding. . . . .25	
3. Offeror's experience in managing. . . . .15	
similar projects of similar size	
4. Experience in programming and. . . . .5	
administering U.S. short term technical training of foreign students	
5. Experience in providing short term. . . . .5	
experts, similar to those required, to distant project sites	
	TOTAL 100

AID received three proposals, including those of Abt and Chemonics. Abt's and Chemonics' technical proposals received equal technical scores of 83.25 while the third offeror's proposal received a technical score of 54.40. As a result of the initial technical evaluation, AID included

---

<sup>2</sup>Short-term technical assistance would be provided during the contract to address specific, short-term contract needs.

the proposals of Abt and Chemonics in the competitive range and rejected the proposal of the third offeror. Discussions were conducted and revised proposals received from Abt and Chemonics. The technical evaluation scores and total estimated costs plus fixed fee for Abt's and Chemonics' revised proposals were as follows:

Chemonics	87.25	\$ 9,717,588
Abt	83.75	\$10,482,739

Because Chemonics' proposal was determined to be only marginally technically superior to Abt's, the contracting officer decided to conduct further cost discussions with the offerors and receive revised proposals. In addition, AID determined that no training would be conducted under the solicitation, and the offerors were directed to delete all costs for training and training administration. The second revised proposals were evaluated as follows:

Chemonics	87.25	\$ 8,531,654
Abt	83.75	\$10,749,380

As a result of its evaluation of the second revised proposals, AID decided to conduct further negotiations with only Chemonics. Accordingly, AID excluded Abt's proposal from the competitive range as no longer having a reasonable chance of receiving award in view of its significantly higher cost.

Abt protested to our Office, arguing that the exclusion of its proposal from the competitive range was unreasonable and that AID had not conducted meaningful discussions with Abt. In response to the protest, AID decided to reopen discussions with Abt and Chemonics and obtain best and final offers (BAFO). Abt withdrew its protest, and BAFOs were received.

Abt's and Chemonics' BAFOs were evaluated as follows:

Chemonics	89.25	\$ 7,905,647
Abt	85.00	\$ 7,994,260

Chemonics' higher point score reflected the evaluation panel's view that Chemonics was more responsive to the agency's discussions than Abt. Specifically, Abt's basic technical approach was found to have not changed appreciably during the competition, and that "[t]he natural resources area which is to be a major emphasis of policy analysis during the second phase still does not receive adequate coverage relative to other areas and the overall program." Also, the evaluators were concerned that Abt's proposed COP may have too many responsibilities and "[a]lthough the COP is without a doubt extremely well qualified, there is

still a sense . . . that the remainder of the staff falls somewhat short, as a group, of the desired qualifications and experience." Chemonics, on the other hand, made proposal changes that resulted in a "highly qualified and well-balanced team," with a good number of senior personnel, and an overall approach that was viewed as "elegant and straight-forward, with an analytical emphasis on natural resources and an organizational structure designed for implementation and identification of policy problems in the use of Hondura[n] renewable natural resources."

The contracting officer determined that Chemonics' proposal represented the best value to the government, given its higher technical rating and lower estimated costs. Award was made to Chemonics, and this protest followed.

Abt first challenges the award to Chemonics on the basis that [deleted], a Chemonics employee, allegedly participated in the preparation of a project paper that formed the basis of this procurement. Abt contends that this resulted in a significant organizational conflict of interest and that Chemonics received "critical information and knowledge, which was not available to other offerors."

AID admits receiving advisory support from [deleted] during AID's preparation of the project paper but denies that [deleted] participated in the drafting of the project paper. AID states that [deleted] recommendations were rejected by AID and did not form the basis of any of the RFP's specifications or work statement. AID also disputes that Chemonics received any information or knowledge that was not available to Abt. In this regard, AID states that Abt's proposed personnel included [deleted] and [deleted], a former AID employee who assisted the AID design team.

Federal Acquisition Regulation (FAR) § 9.501 (FAC 90-8) defines an "organizational conflict of interest" as including the following situation:

"[B]ecause of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the [g]overnment, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

The two underlying principles of the rule against organizational conflicts of interest are (1) to prevent the existence of conflicting roles that might bias a contractor's judgment and (2) to prevent unfair competitive

advantage.<sup>3</sup> FAR § 9.505. An unfair competitive advantage may exist when a contractor possesses proprietary information obtained from a government official without authorization or possesses source selection information that is relevant to the contract but is not available to all offerors, and such information assists the contractor in obtaining the contract. FAR § 9.505(b); Person-System Integration, Ltd., B-243927.4, June 30, 1992, 92-1 CPD ¶ 546. In addition, where a contractor: (1) "prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services," or (2) "provides material leading directly, predictably, and without delay to such a work statement," an unfair competitive advantage exists and the contractor may not supply the system or services, except in certain limited situations. See FAR § 9.505-2(b)(1); GIC Agricultural Group, 72 Comp. Gen. 14 (1992), 92-2 CPD ¶ 263.

The responsibility for identifying and resolving conflicts of interest is that of the contracting officer, who in doing so is admonished to exercise "common sense, good judgment and sound discretion." FAR §§ 9.504, 9.505. We will not disturb a contracting officer's determination regarding a conflict of interest unless it is shown to be unreasonable. ICF, Inc., B-241372, Feb. 6, 1991, 91-1 CPD ¶ 124.

From our review of the record, we find reasonable AID's determination that Chemonics did not have a significant organizational conflict of interest or unfair competitive advantage. Specifically, the record shows that the material prepared by [deleted] did not "directly, predictably and without delay" lead to the RFP's specifications or work statement. Rather, the record shows, as AID and Chemonics assert, that [deleted] recommendations, which arose out of his specialized study of only one element of the overall project, were rejected by AID and were not used in the agency's project paper. Thus, the specific restriction of FAR § 9.505-2(b)(1) is inapplicable. Compare GIC Agricultural Group, *supra* (a firm had an organizational conflict of interest where materials it prepared for the agency led directly, predictably and without delay to the solicitation's work statement).

---

<sup>3</sup>The AID Acquisition Regulation also provides that:

"AID employees are responsible for insuring that no unfair competitive advantage is afforded one contractor over any other contractor in competing for [a]gency contracts." 48 C.F.R. Chapter 7, Appendix A, § 2(a) (1992).

We also find that the participation of a Chemonics employee in advising AID prior to the preparation of the project paper did not result in an unfair competitive advantage. While Abt asserts that Chemonics obtained "unique insight concerning the specific requirements and expectations of AID," it has not identified what information or categories of information Chemonics received, or had access to, that provided this "insight". Moreover, given the participation of [deleted] and [deleted] (whom Abt proposed), Abt's own work as the incumbent contractor, and the RFP's detailed work statement, we fail to see, and Abt does not show, what information Chemonics may have received that Abt did not have and which assisted Chemonics in obtaining this contract. In sum, we simply do not find that Chemonics possessed any competitively useful information that was not available to Abt. See Foley Co., B-253408, Sept. 14, 1993, 93-2 CPD ¶ \_\_\_\_ (bidder does not have an unfair competitive advantage where it does not possess competitively useful information not available to other bidders).

Abt also protests that AID's technical evaluation of Abt's and Chemonics' proposals was unreasonable. Abt argues that AID did not recognize Abt's significant experience as the incumbent contractor for phase one; Abt also challenges the evaluation of Chemonics' proposal as unreasonable because AID did not consider that several of Chemonics' key employees are politically opposed to "the economic policy reforms that this [c]ontract is designed to implement." Abt further argues that AID did not consider that Chemonics's proposed COP would not be available for at least 90 days after contract award, contrary to the RFP requirement that the contractor would field its team leader within 30 days of notification of contract award.

The evaluation of proposals is primarily a matter within the contracting agency's discretion, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Smith Bright Assocs., B-240317, Nov. 9, 1990, 90-2 CPD ¶ 382. We will question the evaluation only where the record shows that it was unreasonable or inconsistent with the RFP's evaluation criteria. Microwave Solutions, Inc., B-245963, Feb. 19, 1992, 92-1 CPD ¶ 169. Mere disagreement with the agency's evaluation does not show that the evaluation was unreasonable. Seair Transp. Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458.

Regarding Abt's experience as the incumbent contractor on the phase one contract, Abt's BAFO received perfect technical scores for the evaluation factors concerning experience (Nos. 4, 5 and 6). Under the most important factor, "qualifications of long term employee," for which offerors were informed that experience would also be evaluated, Abt's proposal received 13 of the 15 points



available for the qualifications and experience of the COP, and 25 of the 35 points available for the qualifications and experience of its other team members. The evaluators' narratives for this subfactor, the qualifications/experience of long-term employees, show that Abt's personnel experience was considered and evaluated to be a proposal strength. Abt's proposal was scored higher than Chemonics' proposal for the qualifications/experience of the COP while Chemonics' other team members were viewed as having better qualifications and experience than Abt's other team members.

There is no evidence in the record that indicates that AID improperly downgraded Abt based on that firm's experience as the incumbent contractor. To the contrary, Abt's proposal was favorably evaluated based in large part upon this incumbent experience. Despite Abt's access to all of the evaluation documentation under the GAO protective order, Abt's complaint with the evaluation of its proposal appears to be based only upon Abt's belief that as the incumbent it should have received an overall higher technical evaluation score than Chemonics; this constitutes no more than mere disagreement with the agency's evaluation and does not show that the evaluation was unreasonable. Sear Transp. Servs., Inc., supra.

Regarding the evaluation of Chemonics' proposal, Abt argues that AID unreasonably did not evaluate the political views of some of Chemonics' proposed team members. Specifically, Abt states that three of Chemonics' Honduran members of the proposed 10 person long-term team are "opposed [to] the policy reforms that this [c]ontract is designed to implement." In Abt's view, "it is incomprehensible that AID would select a contract team which includes key individuals opposed to the very goals of the [c]ontract."

The record indicates, contrary to Abt's assertions, that AID did consider that three of Chemonics' proposed long-term team members had not fully supported the implementation of the Agriculture Modernization Act, which might hinder their effectiveness in implementing the contract work. The evaluation narrative for the evaluation of Chemonics' long-term team members states in pertinent part that "[t]he local Honduran specialist(s) appear to have good credentials, but it is not clear that their previous experience is in line with open market economic policies." While Abt apparently disagrees with AID's evaluation assessment of the qualifications/experience of Chemonics' overall long-term team (including the three employees highlighted by Abt), this disagreement does not demonstrate that AID's evaluation was unreasonable.

Abt also asserts that AID unreasonably evaluated the availability of Chemonics' COP, who will not be available



within 30 days following notification of award as required by the RFP. We do not agree that Chemonics' proposal was inconsistent with the RFP requirements. The RFP provides, as noted above, that within 30 days of notification of contract award the contractor would field its team leader. The record shows that the agency in its evaluation of initial proposals was concerned that Chemonics' COP would not be immediately available and discussed this concern with Chemonics. Chemonics informed AID that while the COP could not be immediately available after award, the COP would travel to Honduras during the contract start-up and in his absence another member of the long-term team, who had served as a COP on a different AID contract, would be the acting COP. The agency found, we think reasonably, that this arrangement satisfied the RFP requirement that the contractor's "team leader" be on site within 30 days of award, although Chemonics' proposal was rated lower than Abt's for the COP evaluation factor in part for this reason.

Abt also protests that the award to Chemonics was the result of bias for Chemonics and against Abt. Specifically, Abt alleges that [deleted], the evaluation panel chairman, was biased in favor of Chemonics because of his association with [deleted], who as noted above provided advisory services prior to the preparation of the project paper. Abt also alleges that another member of the evaluation panel, [deleted], was biased against Abt because [deleted] had publicly disagreed with Abt's COP during the performance of phase one of the project.

AID emphatically denies any bias on the part of its procurement officials. AID has submitted the investigative report of AID's Office of Inspector General (OIG) concerning Abt's bias allegations. The OIG conducted numerous interviews in Honduras and found no credible evidence of bias by [deleted] or [deleted].

Protest allegations of bias on the part of procurement officials must be supported by credible evidence. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171. In addition to producing credible evidence showing bias, the protester must also demonstrate that the bias translated into agency action that unfairly affected the protester's competitive position. Id.

Here, Abt's "evidence" of bias consists of the fact that [deleted] was associated with Chemonics' [deleted] prior to the issuance of the project paper and that [deleted] had publicly disagreed with Abt's COP during Abt's performance of phase one. Abt has also provided affidavits from several

individuals who state their opinion that [deleted] did not act objectively in evaluating proposals because of his alleged hostility to Abt.

We do not find this to be credible evidence of bias. Rather, Abt's arguments are no more than supposition and inference that Abt alleges demonstrates that [deleted] and [deleted] evaluations were unreasonable.<sup>4</sup> This is not sufficient to demonstrate that AID's evaluation and award selection was the result of bias. Triton Marine Constr. Corp., supra. Moreover, these arguments are not supported by the evaluation documentation, which, as noted above, demonstrates a reasonable basis for AID's technical evaluation.

The protest is denied.

James F. Hinchman  
General Counsel

---

<sup>4</sup>The protester simply selectively quotes the same individuals not directly associated with this procurement who, based upon hearsay and their own subjective opinions of [deleted] political views, expressed concern about [deleted] bias without discussing the considerable evidence gathered by the OIG that belied these concerns.